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File No. O. Court of Wards/52

Legal Deptt
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BRANCH p.11(c)

Subject:— Opinions under the Bombay Court of Wards Act 1905

File No. O. Court of Wards

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C O N T E N T S

Legal Department Vol. No. C.Court of Wards/ 1952.

C.No.	R.I./C.No.	Subject	Pages
	C.Ct. of Wards /52	Opinions under the Bombay Court of Wards Act, 1905.	
1	R.I.No. 8773/ 22-3-52. C.No. 6200/ 23-4-52	Question whether the Collector's proposal to assume the management of certain estate under the Court of Wards Act, 1905 is in order or whether it is necessary first to apply to the court under sec. 10 of the Court of Wards Act, 1905 before approaching Government for sanction to assume superintendence of the Estate under sec. 4 of the Act.	1-4
2	R.I.No.7047/ 10-4-52 C.No. 6198/ 23-4-52	Question regarding withdrawal of the superintendence of the Court of Wards in respect of a property which was managed on behalf of a minor and who died afterwards unmarried and in respect of which disputes arose regarding claims to the property as the natural mother of the deceased would adopted a son who obtained a decree in his favour claiming the property. Proposal to withdraw the superintendence on the condition that the adopted son should pay maintenance allowance to the natural mother of the deceased ward. Question whether withdrawal with imposition of such a condition would be legal. The Court of Wards Act, 1905, secs. 25 and 40(2).	5-8
3	R.I.No. 10669/ 30-5-52 C.W.C. 10680/ 26-6-52	Re: Withdrawal of Superintendence of the property assumed under the Court of Wards Act, 1905. The Bombay Court of Wards Act, 1905, sec. 40. Indian Succession Act, 1925, secs. 273 and 381.	9-12
4	R.I.No.10118/ 23-5-52 C.No. 13821/ 23-8-52	Question whether the consent of Govt. to the filing of the award in the Civil Court under the Indian Arbitration Act would amount to Government accepting the partition of the properties made therein: (2) Whether even after a decree is passed in terms of the award, it would be open to the Court of Wards to refuse to release any share till the liabilities of the estate are reduced to a reasonable extent from the total income of the estate	13-20

5	R.I.No. 20587/ 3-9-52 O.No.16467/ 7-10-52	Question regarding assumption of superintendence of the property under sec. 4(1) of the Court of Wards Act on behalf of the minors as source dues out of the loan taken by the deceased property holder are still to be paid	21-14
6	O.No.20992/ 13-12-52	Question whether the management of the Estate can be taken over by the Court of Wards under the Court of Wards Act, 1905 on the ground of dispute between the Bhagdars (sharers) of the Estate.	25-[illegible]

SMR 31-5-56

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The Collector should first apply to the District Court under section 10 (1) of the Bombay Court of Wards Act, 1905, for temporary custody of the estate and also make an application under section 5(1)(c) that the Thakore of Pentalavdi is incapable of managing his property. If the Thakore is declared disqualified by the District Court, the Collector may seek sanction of Government ~~of the~~ under section 4(1) for assumption of superintendence of the estate by the Court of Wards.

Id./P.M.L. 22/4

Remembrancer of Legal Affairs.

U.O. to R.D.No. 6200 , dated the 23rd April 1952.

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Bombay Court of Wards Act, 1905.
Sections 25 & 40(2).

The view expressed by the U.S., R.D. is correct. The maintenance was allowed to the Thakranis by the Court of Wards under section 25 of the Bombay Court of Wards Act, 1905. When the Court of Wards withdraw the superintendence from the Estate under section 40(2), Government cannot impose a condition that the allowance should be continued to be paid to the Thakranis. As an heir Shri Yeswantsinhji would be bound to provide out of the estate, maintenance for those persons whom the late proprietor was legally or morally bound to maintain (p.604 of Mulla's Hindu Law).

Id./ P.M.L. 23/4

Remembrancer of Legal Affairs.

U.O. to R.D.No. 6193, dated the 23rd April 1952.

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Bombay Court of Wards Act, 1905, Section 40.

Indian Succession 1925, Sects. 273 & 381.

Withdrawal of superintendence.

The certificate under part x of the Indian Succession Act, 1925, granted by the Civil Judge (J.D.), Patlad would be conclusive and afford indemnity only as regards payment that may be made in respect of the debts and securities mentioned therein(see section 381 of the Indian Succession Act). As the six sisters of the deceased Government ward claim possession of the estate by virtue of the will dated the 5th February 1933, they may be asked to obtain a probate of the will before the superintendence is withdrawn and the estate handed over to them. The probate would afford full indemnity to Government for delivering the estate to them. (See section 273-do).

Id./P.M.L. 25-6

Remembrancer of Legal Affairs.

U.O. to S.D., No. 10589, dated the 26th June 1952.

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The R.L.A. is requested to advise on the following two points.-

(1) Whether the consent of Government to the filing of the award in the Civil court under the Indian Arbitration Act would amount to Government accepting the partiti -on of the properties made therein;

(2) Whether even after a decree is passed in terms of the award, it would be open to the Court of Wards to refuse to release any share till the liabilities of the estate are reduced to a reasonable extent from the total income of the estate.

Whether Government should give its consent under section 86 of the Civil Procedure Code to the filing of the award in the court against the Rajasaheb of Aundh would be a question of policy which it is for the Government of India to decide. But once the consent is given, it would not be open to Government to maintain the distinction betw -een private and personal property of the Ruler and to contend that the private property of the Ruler is impartible if under the decree in terms of the award the private property of the Ruler has been subject to partition between him and other co-sharers. It appears that the classification made by the late Ruler of Aundh in the inventory of his property into partible and impartible has not been accepted by Government and the question which of the property is his personal property and which private property is still under consideration of Government. It appears, therefore, desirable that this question should be first decided before Government gives its consent under section 86 of the Civil Procedure Code to the filing of the awards.

In its letter dated the 10th July 1952, the Ministry of States, Government of India, observes that it appears a somewhat strange arrangement that

while various members of the family appear to have shared in the assets of the last ruler, the entire debts of the former ruler have been placed as a liability on the estate of the present ruler. The P.& B.D. in its note considers that "the whole estate is under the management of the Court of Wards and the Court of Wards should not release any share until the encumbrances have been reduced to a reasonable extent from the whole income of the estate but it is not clear whether it would be legally possible to do so when once the award is accepted as valid and it is filed in the court". The estate of the Rajasaheb of Aundh has been taken under management of the Court of Wards under section 9 of the Bombay Court of Wards Act, 1905. The second proviso to sub-section (2) of section 9 provides that nothing in this Act shall be deemed to prevent any coasharer other than those ~~whose~~ signing any such application from obtaining partition of his share, whether by suit or otherwise. If Government gives its consent to the filing of the award in the civil court, a decree in terms of it would eventually be passed and such decree would be saved by the second proviso to section 9(2). On a decree being passed, it would be open to each sharer to execute the decree and to have his share partitioned. Under the terms of the award no liability for payment of any part of the debts has been imposed ~~on~~ on any co-sharer. Consequently, on the decree being passed, each co-sharer would get his without being encumbered by any portion of the debt.

The proposal made by the P.&.B.D. would not, therefore, be legally feasible.

V. ought to Shoulder the burden of Discharging the debts and it may not be difficult to achieve this object as the whole estate

M.E.A. would also like to add the following observations:-

(i) The award appears to create a charge on the privy purse of the Ruler for the maintenance of some minors and their other expenses. Whether such charge should be allowed to be created on the privy purse of the Ruler is a question of policy for the Central Government to decide especially because a decision in this case would serve as a precedent applicable to the privy purses of other Rulers in India.

(ii) It appears that the family disputes of the kind require to be settled in one of the three ways, namely, (1) through court, (2) by arbitration and (3) by administrative action of Government. In the present case, the parties have settled their disputes by arbitration. Government may, therefore, consider whether it would not be desirable to allow the settlement by giving its consent to the awards.

Id./ P.M.L 22/8

Remembrancer of Legal Affairs.

U.O. to P.A S.D.No. 13821, dated the 23rd August 1952.

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It is no doubt true that the rule of primogeniture prevails in the matter of succ-ession to the Estate and section 8(1) of the Bombay Court of Wards Act, 1905, would not come in the way of assumption of the superintendence by the Court of Wards under section 4(1) on the ground of disqualification of the land-holder on account of his minority. However, under the Will dated the 3rd October 1951, execu-ted by the late Thakor, Shrimati Vasant Kunverba his widow has been appointed as a guardian both of the property and person of the minor and in such c-ases section 7(a) of the Act prohibits the Court of Wards to assume the superintendence of the pro-perty of the minor except with the previous consent of the District Court. The Collector of Banaskantha, therefore, will have to move Court for the requisite consent. For securing such consent, the District Court would have to be persuaded that the interest of the minor Thakor would be better safeguarded by the Court of Wards. Any further action will have to be deferred till such consent is obtained.

Id./P.M.L 6/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 16467/A , dated the 7th October 1952.

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Bombay Court of Wards Act, 1905

Gothda village.

It appears the Japti Management of the Gothda village was undertaken in 1921-1922 by the Rewakantha Political agency owing to disputes between the Bhagdars (Shrers) of the village and has been continued since then and presumably it was not assumed under any statutory provision of law. It is no doubt true that it is now necessary to regularise the management, but the provisions of Bombay Court of Wards Act, 1905 cannot be availed of for that purpose since the dispute between the Bhagdars is not a ground on which the management of an Estate can be assumed by the Court of Wards under that Act. Unless therefore there are any fresh grounds to support the assumption of management which does not appear to be the case, it would not be feasible to regularise the management under that Act. There is no other analogous provision of law whereunder the management can be continued. It is not clear whether the title of the two rival contestants- the Saiyads and the Kotwals- has been finally adjudicated in the political suit filed by the Saiyads. If the dispute as to the title still continues, it would be desirable to file an interpleader suit and to hand over the possession to such party as may be declared by the Court to be entitled to the possession. Until the matter is finally decided, Government's position would be that of a constructive trustee and it would be possible to continue the management and incur the necessary ex enditure (See section 94 of the Indian Trust Act, 1882).

Id./P.M.L. 12/12

Remembrancer of Legal Affairs.

U.R. to R.D., No 20992/A dated the 13th December 1952.

SMD 4-6-56
4 copies.